

In Re Application Of: Brian Roarty
Serial No. 10/797,255
Filed: 03/10/2004
For: Implementation....

Examiner: Christopher S. Kim
Group Art Unit: 3752
Date: Apr. 7, 2008

RESPONSE TO OFFICE ACTION

This is in response to the Office Action for Restriction dated 12/07/2007.

CLAIMS RESTRICTION

The Examiner asserted the first four claims are generic, which Applicant concedes.

Applicant admits to a sense of confusion, and a small sense of pride, on receiving the Examiner's Office Action. Applicant had considered the claims which the Examiner asserts to be separate species, as allowable variations on the single idea that is specifically identified in the abstract, Summary, and Detailed Description of the best embodiment thereof; and thus, pursuant to MPEP §806.03, should not be subject to restriction.

Applicant respectfully requests that the examination proceed on all claims, for two reasons; first, that the preliminarily-speciated claims are sufficiently related as to justify examination together; and secondly, that those identified as belonging to separate species are covered by a generic claim which they are expressly dependent upon that is allowable.

The Applicant wishes to note an absence of any statement of the facts, contrary to the suggested practice in MPEP §808.01, relied on by the Examiner for his conclusion, and the requirement of a statement of reasons found in MPEP §816. If the Examiner insists upon restriction Applicant respectfully requests the inclusion of a statement pursuant to MPEP §808.02 indicating the facts and reasons for the restriction, as the Applicant

concedes he is not as familiar as the Examiner is presumed to be with the Patent Office's classifications and fields.

As the Examiner has carefully pointed out, even if the objection as to speciation is traversed, an identification of an elected species is mandatory. Accordingly, Applicant specifically enumerates his provisional elections of species in the following paragraphs.

As near as Applicant can tell, the Examiner has identified two species, each of which had several sub-species. The first species was labeled "Nozzle", and had seven subspecies, identified as "1A" through "1G", respectively pairing letters to drawings as follows:

- 1A-Fig. 1;
- 1B – Fig. 2;
- 1C – Fig. 3;
- 1D – Fig. 4;
- 1E – Fig. 6;
- 1F – Fig. 11; and,
- 1G – Fig. 12.

The second species was "Energy adding means", and had five subspecies, identified as "2A" through "2E", respectively pairing those letters to short descriptions as follows:

- 2A - "electrical stimulation of a portion of the throat adding heat directly to the fluid";
- 2B - "inducing a low energy nuclear reaction within the nozzle";
- 2C - "using conduction and convection to heat the fluid";
- 2D - "solar energy"; and,
- 2E - "energy-releasing chemical reaction".

The sole ground cited for speciation was "The species are independent or distinct because they can possess mutually exclusive features". Unfortunately, this conclusory allegation is also tautologically equivalent to the definition of a separating limitation for any patent

claim; i.e. each claim must state something that is distinct and exclusive from all other claims in the same application.

For all of the above grounds and reasons the restriction election is traversed and the Applicant respectfully requests the Examiner to examine the claims.

As it is incumbent upon the Applicant to make an election of the species or invention to be examined and to identify all the claims encompassing the elected invention, in responding to a restriction requirement, Applicant hereby:

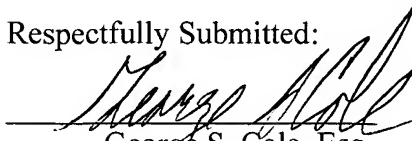
- (1) elects the species "Energy adding means", and subsequently elects the apparent sub-species of "inducing a low energy nuclear reaction within the nozzle", as the species or invention to be examined; and,
- (2) identifies claims 3, 4, and 5-23 as the claims encompassing the elected invention.

If the Examiner has any questions or wishes to discuss this matter he is urged to telephone the Applicant's attorney, George S. Cole, Esq., at (650) 322-7760; or may direct an e-mail communication to the same individual via the e-mail address of GSCdLawyer@aol.com.

A claims listing with the status of each claim, with the claims in ascending order, and with the text of the currently-amended claims has been appended to this Response.

As so corrected, the Applicant believes that these claims are now all in presently allowable, correct, and proper form, and respectfully asks that the Examiner proceed to allow the application.

Respectfully Submitted:



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